



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1153 of 2005

1.M.Natarajan

2.M.Subramaniam

3.P.Chitra

4.M.Selvi

5.R.Krishnamoorthy

...Appellants

Vs.

Govindammal

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.06.2005 passed in A.S. No.38 of 2004, on the file of the Sub Court, Tiruppur, reversing the decree and judgment dated 31.08.2001 passed in O.S. No.226 of 1998, on the file of the District Munsif Court, Tiruppur.

For Appellants

: Mr.V.Anandhamurthy

for M/s.P.Veena Suresh

For Respondent

: Mr.N.Krishnakumar

for M/s.Sarvabhauman Associates

JUDGMENT

The appellants are the plaintiffs in O.S.No.226 of 1998 on the file of the District Munsif Court, Tiruppur. They filed the suit for partition of the suit property into 144 shares and to allot 17 such shares to them and also for costs.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the plaintiffs in nutshell is as follows:



3.1. The suit property measuring 4.05 acres in Survey No.457/1 of Mudalipalaym Village, Tirupur, originally belonged to one Valliammal, wife of Kulanthaippa Gounder. After the demise of Valliammal, her property devolved on her three sons Subbarayagounder, Rasappagounder, Palanisamy gounder and her daughter Palaniammal @ Palanthal. Subbarayagounder died and his 1/4th share in the suit property devolved upon his two sons Muthusamy Gounder and Rasappa Gounder (defendants 4 & 5) and Govindammal (2nd defendant). They became entitled to 1/12 share each. The plaintiffs 1 to 3 are the sons and daughter of late Muthusamy Gounder (4th defendant), while the plaintiffs 4 and 5 are the children of Rasappa Gounder (5th defendant). According to the plaintiffs since the suit property was derived from their grand-father, it is ancestral in nature and therefore, the plaintiffs 1 to 3 are each entitled to 1/48 share and the plaintiffs 4 and 5 are each entitled to 1/36 shares in the suit property.

3.2 After the demise of Palaniammal, her property devolved upon her sons Nachimuthu (1st defendant), Chinnasamy and Subramaniam. Chinnasamy sold his share in favour of R.Balasubramaniam (3rd defendant) and Subramani sold his share in favour of the first defendant Nachimuthu. The plaintiffs and the defendants were enjoying the suit property in common and hence the plaintiffs sent a legal notice 28.05.1997 to the defendants for partition of the suit property, which evoked no response from them. Therefore, the plaintiffs sent another legal notice on 09.12.1997 (a copy of which is marked as Ex.A2) to the defendants seeking for partition of the suit property. The defendants sent a reply dated 29.12.1997 (Ex.A3), which according to the plaintiffs, contained false allegations. The plaintiffs also came to know that the defendants 4 and 5 executed a release deed dated 04.10.1990 (Ex.A1) in favour of their sister Govindammal (2nd defendant), as if the property, which they inherited from their father, absolutely belonged to them. They therefore, filed the suit for partition and separate possession of the suit property.

4. The defendants 4 & 5 remained absent before the trial court and were set exparte. The suit was resisted by the defendants 1 to 3 on the following grounds :

- i. The suit property originally belonged to Valliammal. After her demise, her sons and daughter inherited the property.



ii. Since the property originally belonged to a Hindu female, it cannot be ancestral in nature as far as the plaintiffs are concerned.

WEB COPY

iii. Moreover, on 04.10.1990 Muthusamy Gounder and Rasappa Gounder, the two sons of Subbarayagounder, relinquished their right in respect of 2/3 share in the suit property in favour of their sister Govindammal after receiving a valid consideration of Rs.10,000/- through a registered release deed (Ex.A1)

iv. Since the suit property is not ancestral in nature, the plaintiffs cannot claim any share in it.

They had therefore prayed for the dismissal of the suit.

5. The learned District Munsif, Tiruppur, after framing necessary issues and after full contest, decreed the suit in favour of the plaintiffs and passed a preliminary decree for partition of the suit property into 144 shares and to allot seventeen such shares to the plaintiffs vide his decree and judgment dated 31.08.2001, by observing that the suit property is an ancestral property as far as the grand children of Subbarayagounder are concerned. It is further observed that Muthusamy Gounder and Rasappa Gounder had no right to execute the release deed in favour of her sister when their sons are alive.

6. Aggrieved over the same, the defendants filed an appeal before the Sub Court, Tiruppur, in A.S. No.38 of 2004. The learned Subordinate Judge, after analysing the evidence on record, reversed the findings recorded by the trial Court and dismissed the suit filed by the plaintiffs with the following observations.

- 1) The suit property belonged to Valliammal.
- 2) The property inherited by the children of Valliammal has to be construed as their self acquisition.
- 3) Muthusamy Gounder and Rasappa Gounder (defendants 4 and 5) had every right to execute a release deed in favour of their sister Govindammal .



WEB COPY

4) The plaintiffs cannot therefore claim any share in the suit property and the suit for partition filed by them is liable to be dismissed.

7. Now the present second appeal is filed by the second plaintiff on the following substantial questions of law:

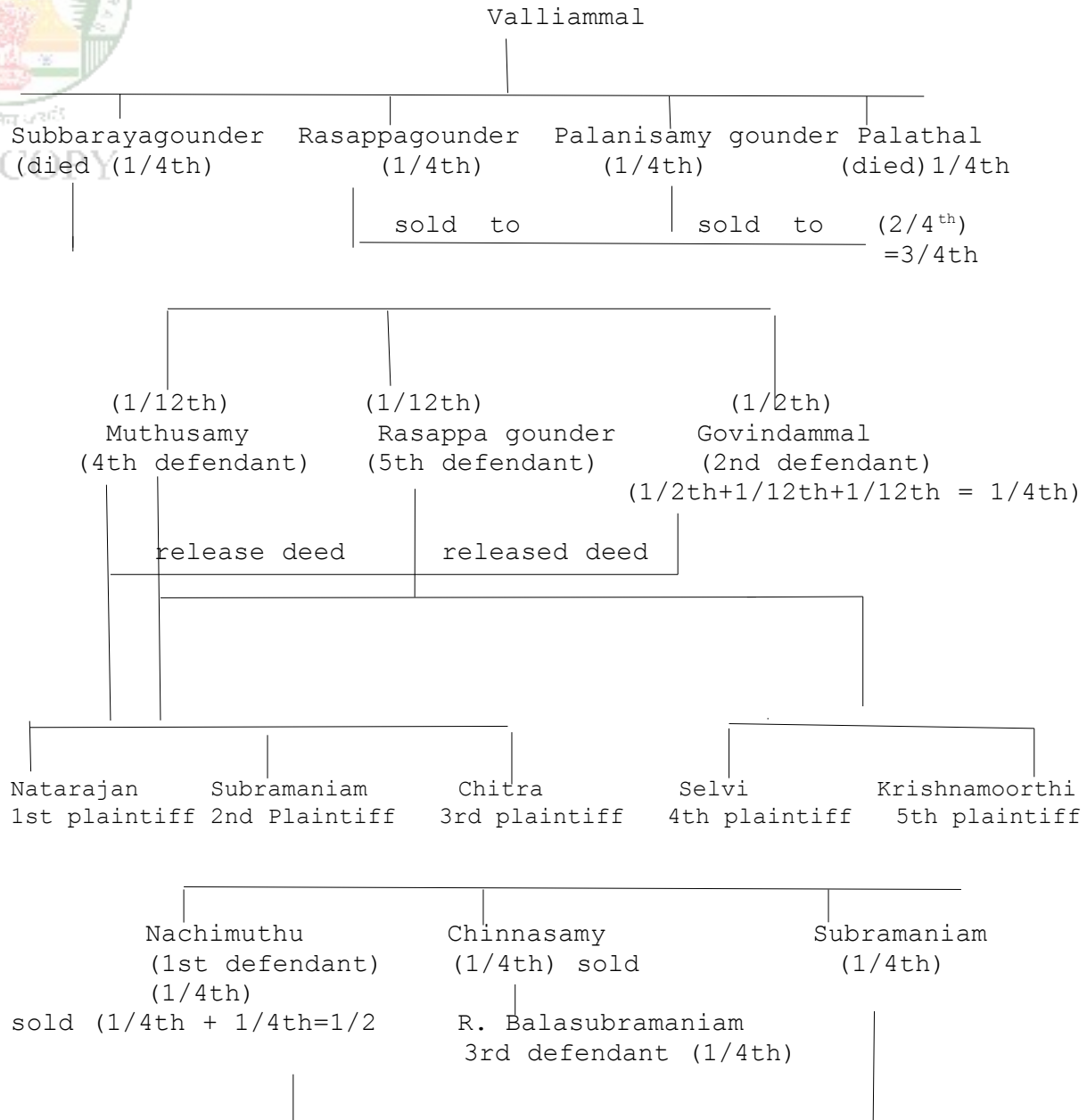
i. Whether the first appellate court is correct in law in negating the claim of partition holding that the property succeeded by the sons and daughter of Subbarayagounder is the self acquired property and they succeeded the property only by succession and not by inheritance, especially when the property inherited from Valliammal should have been construed as ancestral property in which the parties gets right by birth?

ii. Whether the settlement deed executed by the defendants 4 and 5 in favour of their sister / 2nd respondent under Ex.B1 dated 04.10.1990 to the entire extent of the suit property is valid and proved, in the manner known to law and whether the said settlement deed will have any bearing on the claim made by the plaintiffs / Appellants?

iii. Whether a decree against all the defendants can be set aside in the appeal filed only by the 2nd defendant, without adding the other defendants as parties to the First Appeal because the non appealing defendants are also proper and necessary parties for complete and effective adjudication of the dispute?

8 Heard Mr.V.Anandhamurthy for M/s.P.Veena Suresh, learned counsel appearing for the appellants and Mr.N.Krishnakumar for M/s.Sarvabhauman Associates learned counsel appearing for the respondent.

9. The only contention raised by both the counsels is that whether the suit property is ancestral property as far as the plaintiffs are concerned. The genealogy list is shown hereunder:



10. It is the admitted case of both the parties that the suit property originally belonged to one Valliammal and after her demise the suit property devolved upon her three sons namely Subbarayagounder, Rasappa Gounder, Palanisamy Gounder and her daughter Palaniammal @ Palanthal. They were each entitled to 1/4 share in the suit property. During the year 1977, Subbarayagounder died and his 1/4 share in the suit property devolved upon his two sons namely, Muthusamy Gounder and Rasappa Gounder and his daughter Govindammal.



11. The appellants/plaintiffs 1 to 3 are the children of Muthusamy Gounder, while the appellants/plaintiffs 4 and 5 are the children of Rasappa Gounder. The plaintiffs claim that the suit property being an ancestral one, their respective fathers, Muthusamy Gounder and Rasappa Gounder had no right to execute the release deed dated 04.10.1990 in favour of their sister Govindammal.

12. As already observed, both the parties admitted that the suit property originally belonged to late Valliammal. Her death was subsequent to the advent of the Hindu Succession Act 1956. By virtue of Section 14 of the Hindu Succession Act 1956, she was the absolute owner of the suit property. After her demise, her sons and daughter namely Subbarayagounder, Rasappa Gounder, Palanisamy Gounder and Palaniammal @ Palanthai inherited her property by virtue of Section 15(1)(a) of the Hindu Succession Act. Section 15 of the Hindu Succession Act, 1956 reads as follows:

Section 15 in The Hindu Succession Act, 1956

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

The properties so inherited cannot be construed as ancestral properties as far as their children are concerned. On the death of Subbarayagounder, his sons and daughter, namely, Muthusamy Gounder, Rasappa Gounder and Govindammal inherited the property of Subbarayagounder only under Section 8 of the Hindu Succession Act. Therefore, Muthusamy Gounder and Rasappa Gounder had every



right to execute the release deed dated 04.10.1990 (Ex.A1) in favour of her sister Govindammal. As already observed, the appellants are the children of Muthusamy Gounder and Rasappa Gounder and during the lifetime of Muthusamy Gounder and Rasappa Gounder (4th and 5th defendant), they cannot claim any right over the suit property. The first appellate court had discussed the devolution of suit property and all the observations made by the first appellate court are based on sound principles of law. It is pertinent to point out that the present appeal is filed only against the second defendant Govindammal and not against the other defendants. It is settled law that in a suit for partition, all the parties, who are the sharers should be added for complete and effective adjudication. The appeal is construed to be the continuation of the suit and in such circumstances, the present appeal against the second defendant alone cannot be maintained. The substantial questions of law 1 and 2 are answered against the appellant, while the substantial question of law 3 is answered in favour of the respondent. In fine, the second appeal fails and is dismissed.

13. In the result,
- i. the second appeal is dismissed. No costs.
 - ii. the decree and judgment dated 30.06.2005 passed in A.S. No.38 of 2004, on the file of the Sub Court, Tiruppur, is upheld.
 - iii. the decree and judgment dated 31.08.2001 passed in O.S. No.226 of 1998, on the file of the District Munsif, Tiruppur, is set aside.
 - iv. The suit in O.S. No.226/98 is dismissed with costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga
To

1. The Subordinate Judge,
Tiruppur.

2. The District Munsif,
Tiruppur.



3.The Section Officer,
VR Section, High Court,
Madras.

WEB COPY

+1 CC to Mr.V.Anandhamurthy, advocate sr 8454
+1 CC to M/s.P. Veena Suresh, Advocate sr 8757
+1 CC to M/s. Sarvabhuman Associates sr 8450.

S.A.No .1153 of 2005

SS (CO)

SRG (07/04/2022)